

MAY 10 2001

Michael N. Milby, Clerk  
Laredo Division

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

IN RE: §  
AGRIFOS FERTILIZER L.P., ET AL., § JOINTLY ADMINISTERED  
DEBTORS. § UNDER CASE NO. 01-35220-H2-11  
§

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In Re: §  
AGRIFOS FERTILIZER L.P. § Case No. 01-35220-H2-11  
AGRIFOS L.L.C. § Case No. 01-35221-H2-11  
AGRIFOS MINING L.L.C. § Case No. 01-35222-H2-11  
BEDROCK HOLDINGS, LLC § Case No. 01-35223-H2-11  
AGRIFOS FERTILIZER GP L.L.C. § Case No. 01-35224-H2-11  
AGRIFOS FERTILIZER LP L.L.C. § Case No. 01-35225-H2-11

**INTERIM STIPULATION AND ORDER AUTHORIZING DEBTORS TO USE CASH  
COLLATERAL PURSUANT TO 11 U.S.C. § 363(c)(2)(B) ON A LIMITED BASIS**

Came on for consideration the Motion of the Debtors for approval of a Stipulation and Order Authorizing Debtors to Use Cash Collateral Pursuant to 11 U.S.C. § 363(c)(2)(B) on a Limited Basis ("Stipulation") by and between the Debtors and First Union National Bank ("First Union").

**A. PARTIES.**

1. The captioned Debtors filed voluntary petitions under chapter 11 of title 11 of the United States Bankruptcy Code (the "Bankruptcy Code") on May 8, 2001 (the "Petition Date"). Since the Petition Date, the Debtors have remained in possession of their assets and are operating their businesses as debtors-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

2. First Union is a national banking association.

**B. PRE-PETITION AGREEMENTS AND COLLATERAL.**

1. Prior to the Petition Date, First Union made various loans, advances and extensions of credit (the "Pre-Petition Loans") to or for the benefit of certain of the Debtors pursuant to various agreements, instruments and other documents, including, but not limited to that certain Amended and Restated Loan Agreement dated September 10, 1998, as amended on March 28, 2000 (the foregoing, together with all agreements, instruments and other documents



executed in connection therewith, the "Pre-Petition Loan Agreements"). Copies of the Pre-Petition Loan Agreements will be made available on request of any party in interest.

2. As security for the Pre-Petition Loans, Agrifos Mining LLC ("Mining") and Agrifos Fertilizer LP ("Fertilizer") granted to First Union, pursuant to the Pre-Petition Loan Agreements, valid and perfected liens on and security interests in substantially all of Mining's real and personal property and certain defined categories of Fertilizer's personal property, but not on equipment and the real property located in Pasadena, Texas, as more fully and specifically described in the Pre-Petition Loan Agreements and the exhibits and attachments thereto (collectively, the "Pre-Petition Collateral"). The Pre-Petition Collateral includes the Cash Collateral of Mining and Fertilizer as that term is defined in Section 363(a) of the Bankruptcy Code. First Union's interest in Fertilizer's Cash Collateral is junior to that of First Union Financial Corporation (New England).

3. The Debtors require the use of Cash Collateral for the purpose of funding their operations, and have requested First Union to consent to the Debtors' use of Cash Collateral pursuant to the terms and subject to the conditions set forth herein.

4. Based upon the various acknowledgments, representations, warranties and covenants contained herein, First Union is willing to consent to the Debtors' limited use of Cash Collateral commencing upon the date this Stipulation is approved by the Court for the limited purposes and for the term set forth herein and otherwise in accordance with the terms and subject to the conditions contained herein.

**C. ACKNOWLEDGMENTS, REPRESENTATIONS, RELEASE.**

1. The Debtors hereby acknowledge, represent, warrant and agree that:

a. All of the provisions contained in Sections A and B hereto are true and correct and are expressly incorporated herein by reference;

b. First Union asserts that the Pre-Petition Loan Agreements are legal, valid and binding obligations upon the Debtors, and are enforceable against the Debtors in accordance with their respective terms subject only to the Debtors' rights under the Bankruptcy Code or principles of equity;

c. The outstanding amounts due to First Union under the Pre-Petition Loan Agreements as of the Petition Date are \$ 9,862,043.46 of principal, together with all accrued and unpaid interest and First Union's fees and costs including without limitation, the reasonable legal and other professional fees incurred by First Union in connection with the collection of the aforesaid amounts (collectively, the "Pre-Petition Obligations").



d. First Union asserts that it has duly perfected, valid security interests in and liens (collectively, the "Liens") on the Pre-Petition Collateral, to secure the Pre-Petition Obligations; and

2. The Debtors hereby acknowledge the extent and validity of the Liens. With respect to any claims against First Union, if the Debtors have not asserted such claims on or before thirty (30) days from the date of this Stipulation, the Debtors shall be deemed, without further Court order, to waive any right they may have as of the date of this Stipulation to contest, setoff against, counterclaim or seek other reduction of First Union's Liens and/or the Pre-Petition Obligations.

**D. CASH COLLATERAL AND OTHER AGREEMENTS.**

1. The Debtors have requested First Union to consent to their limited use of Cash Collateral (as hereinafter defined) which the Debtors represent is necessary to fund their operations. For purposes of this Stipulation, "Cash Collateral" shall have the meaning ascribed to it pursuant to 11 U.S.C. § 363(a), and shall include the proceeds, products, rents and profits of and from all Pre-Petition Collateral.

2. The Budget attached hereto as Exhibit "A" was prepared by the Debtors and enumerates in detail on a daily basis the Debtors' anticipated collections and cash expenses of operations ("Approved Expenses") together with the Debtors' projected cash receipts ("Projected Revenues") from the Petition Date through the Termination Date.

3. Subject to the terms and conditions set forth herein (and contingent upon Debtors' compliance herewith) and on the condition precedent that this Stipulation is approved by the Bankruptcy Court following a preliminary or final hearing as provided in Bankruptcy Rule 4001(b), First Union consents to the Debtors' use of Cash Collateral to pay only the Approved Expenses set forth in the Budget from the date this Stipulation is approved and entered as an order by the Court until the "Termination Date" which shall be the earlier of (a) May 21, 2001; (b) the date which is five calendar days after the date of a written notice of an Event of Default (as hereinafter defined); or (c) the date which is five calendar days after the date of a written notice from Debtors revoking its consent to the terms and conditions of this Stipulation; except that the Termination Date may be extended from time to time by a written agreement between First Union and the Debtors without the need for further Court approval, subject only to written notice thereof to the Court, the parties listed on the Debtors' Master Service List in effect at the time of such extension, and counsel for the Official Committee of Unsecured Creditors, if any.

4. The Debtors' right to continue to use Cash Collateral shall be contingent upon the Debtors' compliance with each and every provision of this Stipulation.



**E. ADEQUATE PROTECTION.** As adequate protection for the Debtors' use of Cash Collateral:

1. The Debtors hereby grant to First Union replacement security interests and liens (to the extent of and of the same priority as First Union's security interests and liens in and on the Pre-Petition Collateral) on all of the Debtors' now existing and hereafter acquired assets of the same type and category that First Union had a lien on pre-petition, and all cash and non-cash proceeds of all of the foregoing, but only to the extent and in the priority of First Union's valid and perfected liens on such assets prior to the Petition Date (collectively, the "Post-Petition Collateral"), which liens shall be deemed to be effective from the Petition Date; provided, however, that such liens and security interests shall be limited to the extent that the Debtors use Cash Collateral and to the extent that the value of the Pre-Petition Collateral diminishes.

2. To the extent that the Debtors use Cash Collateral in an amount in excess of the value of First Union's interest in the Pre-Petition Collateral and the Post-Petition Collateral, such use shall constitute a cost and expense of administration in this chapter 11 case and shall have a superpriority status pursuant to Code § 507(b) and thus shall be paid ahead of all other costs and expenses of administration including, but not limited to, those specified in Code §§ 503(b) or 507(b) of the Code, subject, however, to the unpaid fees of the clerk of the Bankruptcy Court or District Court, as applicable, and of the United States Trustee pursuant to 28 U.S.C. § 1930(a) and (b) and the Carve Out as that term is defined in the Interim Order Authorizing Debtors in Possession to Enter Into Post-Petition Financing Agreement and Obtain Post-Petition Financing Pursuant to Sections 363 and 364 of the Bankruptcy Code and Granting Liens, Security Interests and Superpriority Claims.

3. The post-petition liens and security interests granted to First Union pursuant to this Stipulation are perfected by operation of law upon the Bankruptcy Court's approval of this Stipulation nunc pro tunc from the Petition Date without further action by First Union. First Union may, but shall not be required to, file any Uniform Commercial Code financing statements and record any additional documents in any jurisdiction or take any other or further action to validate or perfect the security interests and liens granted to them pursuant to and in accordance with this Stipulation. If First Union deem(s) it necessary or convenient, the Debtors shall execute and deliver to First Union, or shall have executed and delivered to First Union, all in form and substance satisfactory to First Union, any other documents, instruments or writings to evidence the terms of this Stipulation, the use of Cash Collateral and/or First Union's liens and security interests, and First Union may request from time to time the execution and delivery of Uniform Commercial Code financing statements, continuation statements, amendments to financing statements, and any other instruments and/or documents relating to the use of Cash Collateral and/or the security interests and liens granted hereunder. The Debtors shall execute all financing statements, amendments and other documents desired by First Union for the perfection of the security interests and liens granted hereunder and the Debtors agree to a lifting of the automatic stay for the limited purpose of carrying out the purposes of this Section. Furthermore,



the Debtors irrevocably authorize the filing of a carbon, photographic or other reproduction of this Stipulation as a financing statement, and agree that such filing is sufficient as a financing statement subject to applicable state law.

4. All of the security interests in and liens on the Post-Petition Collateral granted hereunder are hereby deemed to be effective on and after the Petition Date, shall continue in full force and effect and shall survive the termination of this Stipulation.

5. The Debtors shall pay to First Union, as adequate protection payments, interest on the Pre-Petition Loans at the non-default rate(s) provided for in accordance with the terms set forth in the Pre-Petition Loan Agreements. First Union reserves the right to claim from the Debtors payment of the difference between the non-default rate of interest and the default rate of interest. The Debtors reserve the right to object to such claims.

6. Debtors shall pay to First Union, to permanently reduce the Pre-Petition Loans, all proceeds from the liquidation or other disposition of any Pre-Petition Collateral outside of the ordinary course of business for the Debtors (after payment of senior liens) including, but not limited to, all proceeds from the sale of Mining's real property generally located in Nichols, Florida.

7. As additional adequate protection for the Debtors' use of Cash Collateral and as a further condition to First Union's entry into this Stipulation, the Debtors shall not use any Cash Collateral during the term of this Stipulation except as authorized by this Stipulation and in accordance with the Budget or as consented to by First Union.

8. During the term of this Stipulation, the Debtors shall pay all insurance premiums necessary to maintain adequate insurance coverage on all of Debtors' assets and shall pay all withholding taxes and all other taxes assessed against the Debtors as and when due; and

9. The Debtors shall deliver to First Union, during the term of this Stipulation, any documents or information reasonably requested by First Union.

10. During the term of this Stipulation, during the Debtors' normal business hours, First Union and/or its agents, including but not limited to attorneys, accountants, consultants, appraisers and/or environmental experts, shall have the right on an agreed periodic basis to inspect any of the Debtors' books, records, business plans and any of the Pre-Petition Collateral and the Post-Petition Collateral. Debtors will permit First Union and/or its agents (including consultants) full access to the Debtors' facilities to carry out such inspection. At such times as are mutually agreeable, First Union and/or its agents shall also have full access to Debtors' personnel and the Debtors' professionals and/or consultants, who shall cooperate with First Union and/or its agents in the performance of inspections and audits, the determination of the Debtors' cash needs, the verification of financial information of the Debtors and the evaluation of



the Debtors' performance in bankruptcy together with the Debtors' prospects for formulating a viable and acceptable plan of reorganization or plan of liquidation provided, however, that nothing herein shall be construed as impairing the Debtors' attorney-client and work product privileges or the fiduciary responsibilities of the debtor-in-possession. To the extent professionals and/or consultants of the Debtors have not been retained by the Debtors in these bankruptcy cases, the Debtors shall use their best efforts to provide First Union with access to such professionals and/or consultants upon their retention on terms consistent with this paragraph.

11. This Stipulation is without prejudice to the rights of First Union to seek additional adequate protection, to the extent of any diminution in the value of the Pre-Petition Collateral. Similarly, this Stipulation is without prejudice to the right of the Debtor to controvert such motion or request or to seek further relief as may be appropriate pursuant to §363(c)(2)(B) of the Bankruptcy Code. Similarly, in the event of a termination pursuant to Section G of this Stipulation, the Debtors reserve the right to seek further relief as may be appropriate pursuant to §363(c)(2)(B) of the Bankruptcy Code.

#### **F. FUTURE OPERATIONS.**

1. To the greatest extent permitted under the Pre-Petition Loan Agreements and the Bankruptcy Code, all costs and expenses reasonably incurred by First Union in connection with the preparation and approval of this Stipulation, the preservation and protection of its rights hereunder and the collection of the indebtedness owed by the Debtors to First Union including, without limitation, all filing fees and reasonable counsel fees incurred in connection with the foregoing, and all insurance premiums and other payments reasonably incurred by First Union to adequately insure the Pre-Petition Collateral and the Post-Petition Collateral, but only to the extent such insurance is not provided by the Debtors, and all such other expenses, fees and costs reasonably incurred by First Union in connection with this bankruptcy case, the loans made to or for the benefit of the Debtors, and the enforcement of First Union's rights in the collection of the loans or the preservation of its collateral, whether incurred pre-petition or post-petition, shall constitute a part of the indebtedness owing to First Union ("Post-Petition Costs and Expenses").

2. During the period from the date hereof through the Termination Date, the Debtors agree that they will not grant a lien or security interest (except to the extent a lien or security interest may have been granted to a third party pre-petition in the same type or category of Pre-Petition Collateral) in any of the Pre-Petition Collateral or Post-Petition Collateral to any other party (except First Union Financial Corporation (New England)) without the prior written consent of First Union.



**G. EVENTS OF DEFAULT AND TERMINATION.**

1. The occurrence of any of the following during the term of this Stipulation shall constitute an event of default hereunder ("Event of Default"):

- a. Any Debtor shall fail to keep, observe or perform any of its material agreements or undertakings hereunder including, but not limited to, all payment requirements and reporting provisions contained herein;
- b. Any Debtor shall knowingly furnish or knowingly make any false, inaccurate or materially incomplete representation, warranty, certificate, report or summary in connection with or under this Stipulation;
- c. Unless First Union has been notified in writing and has not objected thereto within three (3) Business Days, Agrifos, Mining or Fertilizer shall permanently cease substantially all of their operations or take any action for the purpose of such cessation;
- d. A trustee is appointed for Agrifos, Fertilizer or Mining;
- e. Any Debtor, committee of creditors or any other party-in-interest shall contest the extent, validity and/or priority of any lien or security interest of First Union, file any claim, complaint, adversary proceeding, suit, demand, action or cause of action against First Union, or shall seek to have the Bankruptcy Court annul, modify or amend any part of this Stipulation without the prior written consent of First Union;
- f. Any Debtor shall contract or agree to sell or sells any of its assets, outside of the ordinary course of business, which are subject to First Union's Liens, without prior written consent of First Union;
- g. The Pre-Petition Collateral or Post-Petition Collateral is impaired by the imposition of any material lien, claim or encumbrance arising after the Petition Date, which is asserted to be equal or senior, in whole or in part, to the Liens in favor of First Union, except to the extent permitted hereunder or consented to by First Union;
- h. Any default or event of default shall occur and be continuing pursuant to any agreement entered into after the date of the filing of these Chapter 11 cases between any one or more of the Debtors and any third party (including, but not limited to First Union Financial Corporation (New England)) pursuant to which agreement such third party: (i) has consented



to such Borrower's use of its cash collateral; or (ii) has agreed to provide such Borrower with debtor-in-possession financing pursuant to § 363 of the Bankruptcy Code;

- i. Any of the chapter 11 cases for Agrifos, Fertilizer or Mining are voluntarily converted to a case under chapter 7 of the Bankruptcy Code or any of such Debtors file a motion requesting a dismissal or a conversion of its chapter 11 case to a liquidation under chapter 7 of the Bankruptcy Code unless any of the foregoing are consented to by First Union; or
- j. Any Debtor attempts, under Section 363, 364 or any other Section of the Bankruptcy Code to subordinate the Liens of First Union or to provide any person (other than First Union Financial Corporation (New England)) any lien or adequate protection in the Pre-Petition Collateral or the Post-Petition Collateral without the prior written consent of First Union.

2. Upon the Termination Date, this Stipulation shall immediately terminate, and unless otherwise extended by the parties hereto in writing, the Debtors' right to use Cash Collateral shall terminate.

#### **H. MISCELLANEOUS.**

1. The Debtors' representations and warranties, acknowledgments and waivers set forth in this Stipulation shall survive the termination hereof.

2. The rights, powers and remedies of First Union provided in this Stipulation and the Pre-Petition Loan Agreements are cumulative and not exclusive of any right, power or remedy provided by law or equity. No failure or delay on the part of any of First Union in the exercise of any other right, power or remedy or shall constitute a waiver of such right or remedy.

3. This Stipulation constitutes the sole agreement of First Union and the Debtors with respect to the subject matter hereof and supersedes all oral negotiations and prior writings with respect to the subject matter hereof.

4. No amendment or extension of this Stipulation, and no waiver of any one or more of the provisions hereof shall be effective unless set forth in writing and signed by First Union and the Debtors.

5. This Stipulation: (i) shall be binding upon each Debtor, First Union and, where applicable, their respective predecessors, successors, agents and permitted assigns (including, as to the Debtors, any trustee appointed or elected in these cases or in a case under chapter 7); and (ii) shall inure to the benefit of the Debtors, First Union and, where applicable, their respective

*except that any such trustee shall not be bound by Debtors' acknowledgement in subparagraph c(2) hereof*



predecessors, successors, agents and permitted assigns; provided, however, that the Debtors may not assign their rights hereunder without the written consent of First Union, and any such assignment or attempted assignment by the Debtors shall be void and of no effect with respect to First Union.

6. The performance of First Union's and the Debtors' obligations under this Stipulation is expressly conditioned upon the approval by the Bankruptcy Court of this Stipulation.

7. The Debtors and First Union represent and warrant to each other that this Stipulation has been duly and validly executed and delivered and that the Stipulation constitutes a valid and legally binding obligation subject only to approval by the Bankruptcy Court.

8. No rights are intended to be created hereunder for the benefit of any third party, donee, creditor or incidental beneficiary.

9. Except as expressly provided herein, the parties' execution of this Stipulation shall not be deemed to constitute a waiver of any of their respective rights or remedies under the Bankruptcy Code or other applicable law.

10. Reports and notices required hereunder shall be delivered by hand or Federal Express or other overnight courier or by fax transmission to:

To First Union, at the following addresses:

FIRST UNION NATIONAL BANK  
Capital Markets Special Situations  
1339 Chestnut Street, 4<sup>th</sup> Floor  
PA 4810  
Philadelphia, LA 19107  
Attention: Don D. Mischler  
Facsimile Number (215) 973-8783

and its counsel at:

FULBRIGHT & JAWORSKI  
1301 McKinney Street, Suite 5100  
Houston, TX 77010-3095  
Attention: Zack Clement  
713-651-5151  
713-651-5246 (fax)  
[zclement@fulbright.com](mailto:zclement@fulbright.com) (e-mail)

and



DUANE, MORRIS & HECKSCHER LLP  
One Liberty Place  
Philadelphia, PA 19103-7396  
Attention: Claudia Z. Springer, Esquire  
Matthew E. Tashman, Esquire  
Facsimile Number: (215) 979-1020

To the Debtors at the following address:

AGRIFOS L.L.C.  
667 Madison Avenue  
New York, NY 10021  
Attention: Margaret Smith  
Facsimile Number: (212) 208-8855

and their counsel at:

AKIN, GUMP, STRAUSS, HAUER & FELD, L.L.P.  
711 Louisiana, Suite 1900  
Houston, TX 77002  
Attention: H. Rey Stroube, III  
(713) 220-5800  
Facsimile Number: (713) 236-0822  
Rstroube@akingump.com (e-mail)

The Debtors shall give notice to First Union of all future filings of any nature by the Debtors with the Bankruptcy Court in this case, or with any other court or governmental agency and shall serve copies thereof upon First Union in accordance with the immediately preceding paragraph hereof.

11. This Stipulation shall be governed by and construed in accordance with the internal laws of the State of Texas and the parties agree that the Bankruptcy Court shall have exclusive jurisdiction to interpret and enforce this Stipulation.

12. This Stipulation may be executed in any number of counterparts and by the different parties on separate counterparts. Each such counterpart shall be deemed an original, but all such counterparts together shall constitute one and the same Stipulation.

IN WITNESS WHEREOF, the Debtors and First Union, by and through their respective counsel, have caused this Stipulation to be executed on the date set forth above.



AKIN, GUMP, STRAUSS, HAUER &  
FELD, L.L.P.

FULBRIGHT & JAWORSKI

By: \_\_\_\_\_  
Name:

By: \_\_\_\_\_  
Name:

Counsel for the Debtors

Counsel for First Union National Bank

So ORDERED, this 9th day  
of May, 2001

Wesley W. Stern



## **EXHIBIT "A"**

### **Disbursement Budget for May 9-21 (\$ millions)**

Rock from Togo plus freight	\$ 1.2
Other raw materials	0.5
Payroll	0.3
Utilities	0.3
Plant vendors	0.5
First Union interest	0.1
Professional fees	<u>0.1</u>
	<u>3.0</u>